

APPEAL NO. 040720
FILED MAY 19, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 2, 2004. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease, with a date of injury of _____, and had no disability. The claimant appealed, disputing the injury and disability determinations. The respondent (self-insured) responded, urging affirmance.

DECISION

Affirmed.

Whether the claimant sustained a compensable injury and had disability are factual questions for the hearing officer to resolve. The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). It is for the hearing officer to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). In the instant case, although the hearing officer was persuaded by the evidence that the claimant injured his left shoulder, the hearing officer was not persuaded that the condition of the claimant's left shoulder was caused by or the result of his employment. The finder of fact may believe that the claimant has an injury, but disbelieve the claimant's testimony that the injury occurred at work as claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). With no compensable injury found, there is no basis upon which to find disability. By definition disability depends upon a compensable injury. See Section 401.011 (16). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). After reviewing the record, we find sufficient evidence to support the injury and disability determinations.

The claimant complains on appeal that he did not properly get to plead his case, because he was nervous and felt intimidated and was only allowed approximately five minutes to go through the "evidence package" admitted into evidence at the CCH with the ombudsman. We find no merit to the claimant's contentions in this regard. The claimant specifically stated at the CCH that he was satisfied with the assistance of the ombudsman at the CCH and did not make any evidentiary objections or request a continuance. The record reflects that the claimant acknowledged at the CCH that he met with the ombudsman for at least fifteen minutes prior to the CCH.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

**CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Edward Vilano
Appeals Judge